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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM LEE ROBINSON,

Defendant.

CASE NO. 1:21-CR-00207-JLT-SKO

STIPULATION SETTING TRIAL DATE AND
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; ORDER

TRIAL DATE: January 30, 2024
TIME: 8:30 a.m.
COURT: Hon. Jennifer L. Thurston

This case is scheduled for a status conference on May 3, 2023. The parties hope to resolve the case by plea agreement but meanwhile, at the court's direction, request that a trial be scheduled to start on January 30, 2024, at 8:30 a.m.. On May 13, 2020, this Court issued General Order 618, which suspended all jury trials in the Eastern District of California "until further notice." Under General Order 618, a judge "may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court's prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge's discretion." General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge "may order case-by-case exceptions" to General Order 618's provisions "at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). The court issued General Order 662 on March 22, 2023, which found that public health conditions had not improved significantly and justified an

1 additional ninety-day extension of previous orders related to court proceedings.

2 These orders were entered to address public health concerns related to COVID-19. Although the
3 general orders address district-wide health concerns, the Supreme Court has emphasized that the Speedy
4 Trial Act’s end-of-justice provision “counteract[s] substantive open-endedness with procedural
5 strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S.
6 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A).
7 *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v.*
8 *Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-
9 justice continuance must set forth explicit findings on the record “either orally or in writing”).

10 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
11 and inexcusable—the general orders require specific supplementation. Ends-of-justice continuances are
12 excludable only if “the judge granted such continuance on the basis of his findings that the ends of
13 justice served by taking such action outweigh the best interest of the public and the defendant in a
14 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets
15 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice
16 served by the granting of such continuance outweigh the best interests of the public and the defendant in
17 a speedy trial.” *Id.*

18 The general orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7). Although the
19 Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or
20 other emergencies, this court has discretion to order a continuance in such circumstances. For example,
21 the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption.
22 *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it
23 impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326,
24 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001, terrorist attacks
25 and the resultant public emergency).

26 The coronavirus pandemic poses a similar, albeit more enduring, “appreciable difficulty” to the
27 prompt proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-
28 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act

1 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, 21 F.4th 1036, 1047
2 (9th Cir. 2022). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2)
3 how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since
4 the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly
5 susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant
6 faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason
7 to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district
8 court has the ability to safely conduct a trial. *Id.*

9 In light of the societal context created by the foregoing, this court should consider the following
10 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
11 justice exception, § 3161(h)(7). When continued, this court should designate a new date for the hearing.
12 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
13 “specifically limited in time”).

14 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
15 through defendant’s counsel of record, accordingly stipulate as follows:

16 1. By previous order this matter was set for a status conference on May 3, 2023. The parties
17 will continue to attempt to resolve the case by written plea agreement but request that the court schedule
18 a trial to begin January 30, 2024, at 8:30 a.m. before District Judge Jennifer L. Thurston.

19 2. By this stipulation, the parties agree to exclude time between May 3, 2023, and January
20 30 2024, under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv).

21 3. The parties agree, and request that the Court find the following:

22 a) Counsel for defendant desires additional time to consult with his client, to review
23 the current charges, conduct additional investigation related to the charges, and to discuss trial
24 strategy and preparation. The parties also intend to attempt to resolve the case by written
25 agreement.

26 b) Counsel for defendant believes that failure to grant the above-requested
27 continuance would deny him the reasonable time necessary for effective preparation, taking into
28 account the exercise of due diligence.

1 c) The government does not object to the continuance and joins in the request for the
2 first trial date available to the court and the parties.

3 d) In addition to the public health concerns cited by General Orders 611, 612, 617,
4 and 655 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly
5 apt in this case because counsel or other relevant individuals have been encouraged to telework
6 and minimize personal contact to the greatest extent possible. It will be difficult to avoid
7 personal contact should the hearing proceed. For these reasons, the court has encouraged the
8 parties to enter this stipulation.

9 e) Based on the above-stated findings, the ends of justice served by continuing the
10 case as requested outweigh the interest of the public and the defendant in a trial within the
11 original date prescribed by the Speedy Trial Act.

12 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
13 et seq., within which trial must commence, the time period from May 3, 2023, to January 30
14 2024, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i),
15 (ii) and (iv) because it results from a continuance granted by the Court at the request of the
16 parties on the basis of the Court's finding that the ends of justice served by taking such action
17 outweigh the best interest of the public and the defendant in a speedy trial.

18 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
19 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
20 must commence.

21
22 IT IS SO STIPULATED.

23
24 Dated: April 26, 2023

PHILLIP A. TALBERT
United States Attorney

25
26 /s/ David Gappa
DAVID L. GAPPA
27 Assistant United States Attorney
28

Dated: April 26, 2023

/s/ MARC DAYS

MARC DAYS

Counsel for Defendant

WILLIAM LEE ROBINSON

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UNDER SPEEDY TRIAL ACT

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ORDER

The court has reviewed and considered the stipulation filed by the parties on April 26, 2023, and also reviewed the record of this case. For the reasons stated in the stipulation the period of time from May 3, 2023, through January 30, 2024, at 8:30 a.m. before District Judge Jennifer L. Thurston, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv) because it results from a continuance granted by the Court at the request of the parties on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

DATED: 4/26/2023

Sheila K. Oberto

THE HONORABLE SHEILA K. OBERTO
UNITED STATES MAGISTRATE JUDGE